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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAYMOND D. CHESTER,
Plaintiff,
vs.
AUDREY KING, et al.,
Defendants.

1:16-cv-01257-DAD-GSA-PC

SCREENING ORDER

ORDER DISMISSING COMPLAINT FOR FAILURE TO STATE A CLAIM, WITH LEAVE TO AMEND (ECF No. 1; Resolves ECF No. 8.)

THIRTY-DAY DEADLINE FOR PLAINTIFF TO FILE AMENDED COMPLAINT

ORDER FOR CLERK TO SEND PLAINTIFF A CIVIL COMPLAINT FORM

I. BACKGROUND

Raymond D. Chester (“Plaintiff”) is a civil detainee proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On August 25, 2016, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

Plaintiff’s Complaint is now before the court for screening.

II. SCREENING REQUIREMENT

The in forma pauperis statute provides that “the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief

1 may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). “Rule 8(a)’s simplified pleading standard
2 applies to all civil actions, with limited exceptions,” none of which applies to section 1983
3 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). A
4 complaint must contain “a short and plain statement of the claim showing that the pleader is
5 entitled to relief” Fed. R. Civ. P. 8(a)(2). “Such a statement must simply give the
6 defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”
7 Swierkiewicz, 534 U.S. at 512. Detailed factual allegations are not required, but “[t]hreadbare
8 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
9 suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell
10 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not
11 required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681
12 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual allegations are
13 accepted as true, legal conclusion are not. Iqbal, 556 U.S. at 678. However, “the liberal
14 pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490
15 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply
16 essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
17 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266,
18 268 (9th Cir. 1982)).

19 Under section 1983, Plaintiff must demonstrate that each defendant *personally*
20 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
21 2002) (emphasis added). This requires the presentation of factual allegations sufficient to state
22 a plausible claim for relief. Iqbal, 556 U.S. at 678; Moss v. U.S. Secret Service, 572 F.3d 962,
23 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility
24 standard. Id.

25 **III. SUMMARY OF COMPLAINT**

26 Plaintiff is presently housed at Coalinga State Hospital (CSH) in Coalinga, California,
27 where the events at issue in the Complaint allegedly occurred. Plaintiff names as defendants

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1 Audrey King (Executive Director), Jagsir Sandhu, M.D. (Chief Medical Officer), and Bradley
2 Powers, M.D. (Unit Physician), who were all employed at CSH during the relevant time period.

3 Plaintiff's allegations follow, in their entirety.

4 Plaintiff has Hepatitis C. Hepatitis C is a disease of the liver. Hepatitis C will
5 destroy my liver and kill plaintiff if it is not treated. However, there is a cure for
6 Hepatitis C. This cure is a drug called Harvoni. Harvoni is the only available
7 treatment that will cure my Hepatitis C disease.

8 At least three times since July 31, 2015, plaintiff has requested Hepatitis C
9 treatment, but no treatment has commenced over the past year. I have been
10 repeatedly told that "approval is needed" to treat my Hepatitis C. As of
11 December 29, 2015, "a referral for an infectious disease consultant [was] made
12 to address treatment of [plaintiff's] Hepatitis C." Nothing else has happened to
13 actually provide plaintiff with Hepatitis C treatment.

14 Please see copies of three responses to plaintiff's three separate administrative
15 complaints requesting Hepatitis C treatment.

16 (ECF No. 1 at 3.)

17 Plaintiff requests monetary damages and injunctive relief.

18 **IV. PLAINTIFF'S MEDICAL CLAIM**

19 The Civil Rights Act under which this action was filed provides:

20 Every person who, under color of any statute, ordinance, regulation, custom, or
21 usage, of any State or Territory or the District of Columbia, subjects, or causes
22 to be subjected, any citizen of the United States or other person within the
23 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
24 secured by the Constitution and laws, shall be liable to the party injured in an
25 action at law, suit in equity, or other proper proceeding for redress

26 42 U.S.C. § 1983.

27 "[Section] 1983 'is not itself a source of substantive rights,' but merely provides 'a
28 method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386,
393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). "To the extent that the violation of
a state law amounts to the deprivation of a state-created interest that reaches beyond that
guaranteed by the federal Constitution, Section 1983 offers no redress." Id.

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1 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
2 color of state law and (2) the defendant deprived him or her of rights secured by the
3 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
4 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
5 “under color of state law”). A person deprives another of a constitutional right, “within the
6 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
7 omits to perform an act which he is legally required to do that causes the deprivation of which
8 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
9 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
10 causal connection may be established when an official sets in motion a ‘series of acts by others
11 which the actor knows or reasonably should know would cause others to inflict’ constitutional
12 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
13 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
14 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
15 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

16 As a civil detainee, Plaintiff’s right to medical care is protected by the substantive
17 component of the Due Process Clause. Youngberg v. Romeo, 457 U.S. 307, 315, 102 S.Ct.
18 2452 (1982). A determination whether Plaintiff’s rights were violated requires “balancing of
19 his liberty interests against the relevant state interests.” Id. at 321. Plaintiff is “entitled to more
20 considerate treatment and conditions of confinement than criminals whose conditions of
21 confinement are designed to punish,” but the Constitution requires only that courts ensure that
22 professional judgment was exercised. Id. at 321-22. A “decision, if made by a professional, is
23 presumptively valid; liability may be imposed only when the decision by the professional is
24 such a substantial departure from accepted professional judgment, practice, or standards as to
25 demonstrate that the person responsible actually did not base the decision on such a judgment.”
26 Id. at 322-23.

27 Here, Plaintiff has failed to allege sufficient facts to demonstrate that any of the named
28 Defendants’ actions substantially departed from accepted professional judgment. In fact,

1 Plaintiff fails to link any Defendant with an affirmative act, participation in another's
2 affirmative act, or omission to perform an act which he is legally required to do that causes the
3 deprivation of which complaint is made. To state a claim, Plaintiff must allege facts
4 demonstrating what each of the named defendants did that caused the deprivation of his rights.
5 A supervisor is only liable for the constitutional violations of . . . subordinates if the supervisor
6 participated in or directed the violations, or knew of the violations and failed to act to prevent
7 them. There is no *respondeat superior* liability under [§] 1983." Taylor v. List, 880 F.2d 1040,
8 1045 (9th Cir. 1989) (citations omitted). The written responses to Plaintiff's administrative
9 complaints indicate that his doctor is aware of his concerns and Plaintiff has been referred to a
10 specialist so that treatment can be decided. This suggests a professional judgment to which the
11 courts generally must defer. Plaintiff does not allege that any of the Defendants knew of any
12 specific need for the treatment that Plaintiff wants. Nor has Plaintiff shown that his failure to
13 receive this medication substantially deviated from professional standards. No specific harm is
14 alleged. Plaintiff will be granted leave to amend to cure these deficiencies.

15 **V. CONCLUSION AND ORDER**

16 The court finds that Plaintiff's Complaint fails to state any claim upon which relief may
17 be granted under § 1983. The court will dismiss the Complaint for failure to state a claim and
18 give Plaintiff leave to file an amended complaint addressing the issues described above.

19 Under Rule 15(a) of the Federal Rules of Civil Procedure, "[t]he court should freely
20 give leave to amend when justice so requires." Accordingly, the court will provide Plaintiff an
21 opportunity to file an amended complaint curing the deficiencies identified above. Lopez v.
22 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file the First
23 Amended Complaint within thirty days.

24 The First Amended Complaint must allege facts showing what each named defendant
25 did that led to the deprivation of Plaintiff's constitutional rights. Fed. R. Civ. P. 8(a); Iqbal,
26 556 U.S. at 678; Jones, 297 F.3d at 934. Plaintiff must demonstrate that each defendant
27 *personally* participated in the deprivation of his rights by their actions. Id. at 676-77 (emphasis
28 added).

1 Plaintiff should note that although he has been given the opportunity to amend, it is not
2 for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith,
3 507 F.3d 605, 607 (no “buckshot” complaints). Plaintiff is not granted leave to add allegations
4 of events occurring after the date he filed the Complaint, August 25, 2016.

5 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey
6 v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete
7 in itself without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an
8 amended complaint, as in an original complaint, each claim and the involvement of each
9 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
10 titled “First Amended Complaint,” refer to the appropriate case number, and be an original
11 signed under penalty of perjury.

12 Based on the foregoing, it is **HEREBY ORDERED** that:

- 13 1. Plaintiff’s Complaint is dismissed for failure to state a claim, with leave to
14 amend;
- 15 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 16 3. Plaintiff is granted leave to file a First Amended Complaint curing the
17 deficiencies identified by the court in this order, within **thirty (30) days** from
18 the date of service of this order;
- 19 4. Plaintiff shall caption the amended complaint “First Amended Complaint” and
20 refer to the case number 1:16-cv-01257-DAD-GSA-PC; and
- 21 5. If Plaintiff fails to file a First Amended Complaint within thirty days, this case
22 shall be dismissed for failure to state a claim.

23
24 IT IS SO ORDERED.

25 Dated: August 22, 2017

/s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE